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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAN RYDERSTAM and SOREN ERIKSSON

Appeal 2009-001772
Application 10/694,167
Technology Center 3600

Decided: December 4, 2009

Before ALLEN R. MACDONALD, *Vice Chief Administrative Patent Judge*, and MICHAEL W. O'NEILL and FRED A. SILVERBERG, *Administrative Patent Judges*.

SILVERBERG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Jan Ryderstam et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE, and ENTER A NEW GROUND OF REJECTION PURSUANT TO 37 C.F.R. § 41.50(b).

THE INVENTION

The Appellants' claimed invention is directed to a method of controlling the tractive force of a vehicle (Spec. 1:14-17).

Claim 1, reproduced below, is representative of the subject matter on appeal.

> 1. A method of controlling tractive force of a vehicle comprising:
>
> determining a tractive force request of a driver of the vehicle;
>
> determining an actual tractive force of the vehicle; and
>
> modifying the actual tractive force of the vehicle to be equal to the tractive force request.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Kitano	US 6,528,959 B2	Mar. 4, 2003

Additional Evidence Applied in the New Ground of Rejection:

Suhre	US 6,542,806 B1	Apr. 1, 2003

The following rejections by the Examiner are before us for review:

1. Claims 1-5, 8 and 13-15 are rejected under 35 U.S.C. § 102(e) as being anticipated by Kitano.

2. Claims 6, 7, 9-12 and 16-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kitano.

ISSUE

The issue before us is whether the Examiner erred in finding that Kitano describes the step of modifying an actual tractive force of a vehicle to be equal to a tractive force request as called for in independent claims 1, 6, 9-13 and 16-19 (Reply Br. 2; App. Br. 8, 13, 15, 16-23).

ANALYSIS

Appellants contend that Kitano does not describe the step of modifying an actual tractive force of a vehicle to be equal to a tractive force request as called for in independent claims 1, 6, 9-13 and 16-19 (Reply Br. 2; App. Br. 8, 13, 15, 16-23)

Regarding claims 1-5, 8 and 13-15: The Examiner found that Kitano describes the step of "modifying the actual tractive force of the vehicle to be equal to the tractive force request/demand . . ." (Ans. 3). In support of the finding, the Examiner references in Kitano to step S35 in figure 3; column 3, lines 35-38; column 7, lines 18-24 and 57-67; column 17, lines 45-50 and 56-62; and figures 2, 3 and 29.

The Examiner further found, in regards to claim 1, that "this claim is very broad enough to cover steps that Kitano already taught. It is recognized that what claim 1 asserts, are really normal vehicle's control works - 'modifying' functions are already included in calculations of Kitano for a target value ('modifying' function is merely makes changes according to input values)." (Ans. 6).

In Kitano, step S35 describes calculating the target front-wheel driving force (col. 14, ll. 62-64).

We do not see nor does the Examiner explicitly explain how the above-noted references to portions of Kitano equate with any specificity to the claimed invention, in particular, to the step of "modifying an actual tractive force request . . . " as called for in independent claims 1 and 13.

The claimed invention calls for the step of modifying the tractive force of the vehicle based on the tractive force request of the driver.

In Kitano, however, conditions such as slipping of the wheels, not the driver's request, cause the target driving force to be modified (col. 15, ll. 1-6). Therefore, Kitano does not describe the step of modifying the tractive force of the vehicle based on the tractive force request of the driver as called for in independent claims 1 and 13. *See Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001) (To establish anticipation, "all of the elements and limitations of the claim must be shown in a single prior reference, arranged as in the claim.").

Accordingly, Kitano does not anticipate independent claims 1 and 13. For the same reasons, Kitano does not anticipate claims 2-5, 8, 14 and 15, which depend from claims 1 and 13, respectively.

Regarding claims 6, 7, 9-12 and 16-20: The Examiner's conclusion of obviousness regarding the implementation of Kitano's teaching to describe a step that teaches a percentage of available tractive force as called for in independent claims 6, 9-12 and 16-19 (Ans. 5) was premised on the Examiner's prior conclusion that Kitano anticipated claim 1, that is, Kitano included the step of modifying the actual tractive force of the vehicle to be equal to the tractive force request.

We previously found in regards to claim 1 that Kitano does not describe modifying the actual tractive force of the vehicle to be equal to the tractive force request.

The Examiner has not provided any rationale why the step of modifying the actual tractive force of the vehicle to be equal to the tractive force request as called for in independent claims 6, 9-12 and 16-19 would have been obvious to a person having ordinary skill in the art. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

Further, it is not clear to us why the step of modifying the actual tractive force of the vehicle to be equal to the tractive force request as called for in independent claims 6, 9-12 and 16-19 would have been obvious to a person having ordinary skill in the art.

We thus conclude that the Examiner also erred in rejecting independent claims 6, 9-12 and 16-19 as being unpatentable over Kitano. For the same reasons, Kitano does not anticipate claims 7 and 20, which depend from claims 6 and 19, respectively.

NEW GROUND OF REJECTION

We enter a new ground of rejection pursuant to 37 C.F.R. § 41.50(b).

Claim 1

Claim 1[1] is rejected under 35 U.S.C. § 102(e) as being anticipated by Suhre.

The step of determining a tractive force request of a driver of the vehicle as called for in claim 1 is met by Suhre's method of controlling tractive force request of a ground vehicle comprising the step of receiving a

[1] Claim 1 has been reproduced on page 2 of this Decision on Appeal.

tractive force request and determining a tractive force command as a fractional portion of the tractive force request, wherein the tractive force request is typically received from a manually controlled foot pedal and the fractional portion can be unity (1.00) when no slip occurs (Abstract; col. 3, ll. 15-30; col. 3, l. 59-col. 4, l. 5; col. 8, ll. 28-67; and figs. 1-2).

The step of determining an actual tractive force of the vehicle as called for in claim 1 is met by Suhre's method step of determining a rotational velocity of a shaft, or axle, selected from the group consisting of a driven shaft and a non-driven shaft (col. 3, ll. 31-58; and col. 8, ll. 28-67).

The step of modifying the actual tractive force of the vehicle to be equal to the tractive force request as called for in claim 1 is met by Suhre's method step of selecting a desired gear ratio between the source of motive power and the drive shaft, wherein the desired gear ratio is selected as a function of the tractive force command and the rotational velocity (Abstract; col. 3, l. 59-col. 4, l. 5 col. 8, ll. 28-67; and figs. 1-2); and Suhre's statement that "[r]egardless of the actual manually input tractive force request, the present invention will monitor numerous variables and modify the tractive force command in order to achieve the desired results of the operator of the vehicle (Abstract; and col. 8, ll. 18-27).

Therefore, we find that Suhre anticipates the steps called for in claim 1.

Claims 2-20

The Board of Patent Appeals and Interferences is a review body, rather than a place of initial examination. We have made a rejection above under 37 C.F.R. § 41.50(b). However, we have not reviewed claims 2-20 to the extent necessary to determine whether these claims are unpatentable over

Suhre and other patents cited in the record. We leave it to the instant Examiner to determine the appropriateness of any further rejections based on these references.

CONCLUSIONS

Appellants have established that the Examiner erred in finding that Kitano describes the step of modifying an actual tractive force of a vehicle to be equal to a tractive force request as called for in independent claims 1, 6, 9-13 and 16-19.

DECISION

The decision of the Examiner to reject claims 1-20 over Kitano is reversed.

Pursuant our authority under 37 C.F.R. § 41.50(b), we enter a new ground of rejection of claim 1 under 35 U.S.C. § 102(e) as being anticipated by Suhre.

FINALITY OF DECISION

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) (2007). 37 C.F.R. § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

> (1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the Examiner, in which event the proceeding will be remanded to the Examiner. . . .
>
> (2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

REVERSED; 37 C.F.R. § 41.50(b)

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